

identified application.

Restriction is only proper if the restricted inventions are independent or patentably distinct. MPEP §804. The burden is on the Examiner to provide reasons and/or examples to support a conclusion of patentable distinctness between the restricted claims. MPEP §804. Applicants respectfully traverse the restriction requirement on the ground that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between any of Groups I-III.

The Examiner has characterized the relationship between the inventions of Groups I and II as being unrelated because they "are different products with different compositional make-up." However, Applicants submit that the inventions of Groups I and II are related as combination and sub-combination, i.e., the bacteria of Group I (Claims 1-11) are the sub-combination and the pharmaceutical compositions of Group II (Claims 12-25) are the combination of the bacteria of Group I and a pharmaceutical carrier. The MPEP provides specific guidance for establishing whether claims so related are patentably distinct. Applicants submit that there is no reason of record which would support a conclusion of patentable distinctness for the inventions of Groups I and II.

The Examiner has characterized the relationship between the inventions of Groups I/II and III as being one of product and process of use. Such types of inventions are distinct if: (1) the process as claimed can be practiced with a materially different product; and (2) the product as claimed can be used to practice another and materially different process. MPEP §806.05(h). The Examiner has attempted to demonstrate patentable distinctness by asserting that the claimed bacteria could be used "in tissue culture processes or in diagnostic assays." However, it is noted that the Claims of Group II are directed toward pharmaceutical

compositions, and it is not seen how such pharmaceutical compositions could be used "in tissue culture processes or in diagnostic assays."

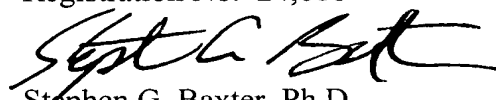
For all of these reasons, the restriction is improper and should be withdrawn.

Applicants submits that the application is now in ready for examination on the merits, and early notification of such action is earnestly solicited.

Respectfully submitted,

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